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July 7, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

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JUL 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte* Communication
ET Docket. 98-42
Our Ref.: 07330-008001

BOSTON

DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Dear Ms. Salas:

This is in response to an *ex parte* written communication filed with the Commission on June 9, 2000, by Mitchell Lazarus, counsel for an ever changing group of companies that operate under the rubric of "the Part 15 Interests". Fusion believes it is a misnomer for this handful of companies, who appear to be related mainly by the fact that they share common regulatory counsel, to pass themselves off as representatives of the broader Part 15 manufacturing community. This chameleon group, which no longer even includes Bluetooth representatives, will hereinafter be referred to more accurately as "the Lazarus Clients".¹

The Lazarus Clients complain that Fusion's May 25, 2000, written notice of an *ex parte* communication that took place on May 11, 2000, was untimely filed by not having been served on all other parties by the next business day. They allege that the two week filing delay threatens to prejudice "other parties" in the proceeding and urge that Fusion's communications, both oral and written, be sanctioned with dismissal.

¹ On November 25, 1998, Mitchell Lazarus filed an *ex parte* letter on behalf of his clients Symbol Technologies, Inc., 3Com Corporation and Harris Corporation. On December 1, 1998, Mr. Lazarus filed another *ex parte* letter which he stated was supported by the Bluetooth Promoters (Ericsson, IBM, Intel, Nokia and Toshiba), Harris Corporation, Metricom, Symbol Technologies, Inc. and 3Com Corporation. On December 23, 1998, Mr. Lazarus file another *ex parte* letter on behalf of the foregoing group of companies which he deemed "the Part 15 Interests." On March 2, 1999, Mr. Lazarus sent papers to Fusion's counsel on behalf of "the Part 15 and MSS interests," noting that AirTouch Communications, Inc. and Globalstar, L.P. had been added to the group. On September 17, 1999, Mr. Lazarus submitted an *ex parte* letter on behalf of only Symbol, 3Com and Intersil Corporation (formerly a division of Harris Corporation) and "as an accommodation to" Metricom; AirTouch and Globalstar filed a separate *ex parte* letter and the Bluetooth Promoters did not submit any filing. On December 22, 1999, Mr. Lazarus submitted an *ex parte* filing, again for the Part 15 Interests, this time adding Clearwire Technologies, Inc., but not including AirTouch and Globalstar. In Mr. Lazarus' June 9th submission, he refers to the "Part 15 Interests" as consisting of Symbol, 3Com, Intersil, Metricom and Clearwire and newcomers Eastman Kodak Company and LinCom Wireless Corporation but no longer including the Bluetooth Promoters.

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The Lazarus Clients are plainly incorrect that Fusion's filing was late-filed under Commission Rules. The subject matter of Fusion's *ex parte* communications consisted of "data and arguments" which are already reflected in numerous earlier filings made by Fusion in Docket 98-42. Under Rule 1.1206(b)(2), an *ex parte* notice as to such communications is clearly not subject to the "next business day" filing requirement. Moreover, to the extent that any of Fusion's communications addressed matters specific to its pending Petition for Further Rulemaking, these are exempt from public disclosure per Rule 1.1204(b)(2), an issue that was previously raised and cleared by the Office of the General Counsel.² Accordingly, no grounds for sanctions can lie in this matter.

As to their substantive remarks, the Lazarus Clients grossly misstate the facts on record, misunderstand and/or misconstrue the law and otherwise raise arguments that are more properly the subject of Fusion's pending Petition for Rulemaking on file with the Commission since February 29, 2000. Indeed, the sharp and hysterical fabrications provoked by Fusion's May 25th letter argue persuasively for the very sort of broad public debate which only a rulemaking can elicit.

Notwithstanding, the remarks of the Lazarus Clients cannot go unchallenged, and Fusion offers the following summary responses to the more outrageous and glaring inaccuracies.

- Allegation: "This proceeding was launched at Fusion's request, to establish rules for RF lighting at 2.4 GHz." (p. 2)³

Response: This false and utterly misleading statement of fact typifies the filings made by the Lazarus Clients throughout this proceeding. In May 1996, Fusion sought a very limited waiver for RF lighting emissions below 30 MHz. In April 1998, the Commission, on its own motion, initiated this rulemaking proceeding. Fusion has never sought to establish any rules for RF lighting in any band at any time.

- Allegation: The limits set forth in the current proposal "will permit the marketing of Fusion's products, albeit with minor modifications." (p.3)

Response: Fusion's technical presentation to the OET staff on August 26, 1999, and its filings of September 3, 1999, and October 1, 1999, refute completely, unequivocally and in scientific detail any notion that minor modifications to Fusion's RF lamps can solve the serious interference problems raised by the Lazarus Clients.

² Fusion confirmed this interpretation of the *ex parte* rules with the Commission's Office of General Counsel by letter dated April 4, 2000, to David Senzel, Esq. from Terry Mahn.

³ All page references are to the June 9, 2000, Lazarus letter.

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- Allegation: Fusion has offered no counterproposal to the various proposals submitted by the Lazarus Clients. (p.4)

Response: Fusion's position, grounded in decades-old ITU and FCC law, is that in-band limits cannot be imposed on ISM products, including RF lighting. Any counter to the various conflicting proposals for in-band limits offered by the Lazarus Clients would require Fusion, in effect, to negotiate against itself. Fusion, however, has "countered" that spread spectrum devices should be removed to other bands or should be hardened against ISM interference by the adoption of interference rejection standards for receivers.

- Allegation: Fusion has "refused to meet with" the Lazarus Clients. (p. 4)

Response: Meetings and information exchanges between attorneys and engineers have been unproductive. Fusion has always been willing to meet with the business managers of the Lazarus Clients.

- Allegation: Fusion's May 25th letter rests on two incorrect factual assumptions: that RF lighting and part 15 cannot coexist within 300 yards to one-half mile; and that operation of RF lights is certain to cause destructive interference on a significant scale.

Response: Fusion's factual assumptions come directly from the filings of the Lazarus Clients. On November 19, 1998, the Bluetooth Promoters presented an analysis to the FCC, characterized as "far from the worst case scenario," which reported that a single RF lamp had a "limiting interference level" of 308 meters and at closer distances would "prevent operations."⁴ On December 23, 1998, the Lazarus Clients presented the Commission with a proposal for in-band limits that was more than a magnitude lower (in the main region of the band) than their latest proposal, yet was characterized as being "near the top of the range that typical Part 15 systems can tolerate without severe disruption."⁵ A subsequent proposal for in-band limits, still well below the latest proposal, was characterized as being at levels that "will inflict serious levels of interference on wireless LAN receivers."⁶

- Allegation: "Any conceivable interference controversy runs automatically in Fusion's favor." (p. 5)

Response: Fusion customers have, in fact, discontinued the use of or returned RF lamps due to the interference caused to wireless LANs.

⁴ Letter of November 19, 1998, to M. Salas from D. Jatlow.

⁵ Letter of December 23, 1998, to M. Salas from M. Lazarus.

⁶ Letter of March 2, 1999, to M. Salas from M. Lazarus.

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- Allegation: "ISM/Part 15 is the most lopsided relationship [in favor of ISM] between any two user groups in Commission-related spectrum." (p. 5)

Response: Current number of Bluetooth member companies = 1,891; number of RF lighting manufacturers = 1.

- Allegation: RF lighting devices are to horse-drawn vehicles as spread spectrum devices are to automobiles. (p.5.)

Response: RF lighting and spread spectrum devices perform entirely different functions and do not even remotely compete with one another. The only thing these disparate technologies have in common is that they require the same spectrum for incompatible uses.

- Allegation: Fusion wants FHSS receivers to be "hardened against unlimited interference." (p. 5-6)

Response: Fusion has asked for a rulemaking to establish reasonable immunity standards based on test procedures designed to measure FHSS immunity to current RF lighting emissions.

- Allegation: "It is absurd to insist that receivers to [sic] be able to operate in the face of interference they are already required to accept." (p.6)

Response: Several of the Lazarus Clients, going under the name of the Wireless Ethernet Compatibility Alliance (WECA), have recently asked the Commission to require wideband FHSS receivers to implement interference rejection standards in order to operate in the face of interference they are already required to accept.⁷

- Allegation: In-band limits coupled with the interference rejection requirements of Rule 15.247 (a)(1) "should be adequate to assure Fusion's customers that they can operate RF lights in reasonable proximity to their communication equipment." (p.6)

Response: Several of the Lazarus Clients and their counsel, through WECA, acknowledge that the Commission has never established criteria for compliance with Rule 15.247(a)(1) and openly admit that FHSS systems marketed today do not comply with this rule.⁸

⁷ See WECA letter of April 10, 2000 from M. Lazarus to M. Salas.

⁸ See WECA letter of April 10, 2000, p. 8-9.

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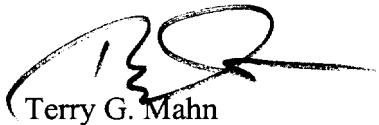
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- Allegation: The ITU treaty (adopting the ISM bands) requires the Commission “to adopt limits to minimize radiation and hence the interference from Fusion’s ISM products.” (p.7)

Response: The passage quoted by the Lazarus Clients is taken completely out of context. The full ITU text, set out below⁹, makes clear that the reference to minimizing radiation deals with emissions outside of the ISM bands. It could not possibly mean otherwise for to do so would explicitly contradict ITU Radio Regulations expressly giving ISM priority over all radio services in band. Moreover, a footnote to the cited regulation states that administrations “should be guided by the latest CCIR Recommendations.” Current Recommendation ITU-R SM.1056 (1994) specifically recommends against any type of in-band limits on ISM.¹⁰

Once again, the Lazarus Clients are promoting limits on RF Lighting which they falsely characterize as “minor,” even through the record in this proceeding clearly shows that such limits will eliminate RF Lighting entirely from the 2.45 GHz band. They also continue to promote the fiction that their devices will be the victims of ISM interference while at the same time, their corporate members privately threaten Fusion with a marketing blitz to discredit, overwhelm and ultimately drive RF lighting technology from the market.¹¹ That these companies attack Fusion relentlessly is unsurprising given the huge amount of the free spectrum that is at stake; that they base their attacks on distortions and untruths is what the Commission would be advised to sanction.

Very truly yours,



Terry G. Mahn

/sas

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⁹ S15.13 § 10. Administrations shall take all practical and necessary steps to ensure that radiation from equipment used for industrial, scientific and medical applications is minimal and that, outside the bands designated for use by this equipment, radiation from such equipment is at a level that does not cause harmful interference to a radiocommunication service and, in particular, to a radionavigation or any other safety service operating in accordance with the provisions of these Regulations.

¹⁰ See Petition, p. 17, fn. 72.

¹¹ At a meeting between Fusion and the Lazarus Clients on January 14, 1999, the Ericsson representative stated that unless Fusion accepted in-band limits it would face conflicts with Bluetooth and then remarked “[we all] know which industry is going to win.” The Harris representative added that “we will have Microsoft, Boeing [and other large marketing teams] selling against Fusion lamps in the market” and predicted that these would overwhelm Fusion’s efforts to sell its own products. Fusion was also warned by the Ericsson representation that it should “prepare to meet the Class A limits (1mV/m).”

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